

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

JUN 22 2006

Michael N. Milby
Clerk of Court

LUIS ALEJANDRO GARZA

VS.

THE UNITED STATES OF
AMERICA

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§

CIVIL ACTION NO. B-02-154
FEDERAL TORT CLAIMS ACT

PLAINTIFF'S UNOPPOSED MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LUIS ALEJANDRO GARZA, Plaintiff in the above-entitled and numbered cause, by and through his attorney of record, and files this motion for continuance, and in support thereof would respectfully show as follows:

I.

This cause is presently set for trial on July 25, 2006. This is the first motion for continuance. It is uncontested.

II.

Plaintiff has been delayed in preparing for trial for the following reasons:

a. Discovery was abated in this case while the issues pertaining to the government's motion to dismiss were litigated.

b. Plaintiff's counsel did not receive notice from the Court of Appeals that the court's judgment had been reversed for nearly three (3) months after the mandate was issued;

c. Defense counsel, the Honorable Nancy Masso, was unavailable to participate in discovery for approximately one month for health reasons; and

d. Plaintiff's counsel and the government have had difficulty locating and providing plaintiff's attorney with access to the prisoner witnesses who were in the recreation yard at the time Plaintiff was assaulted. Some of those witnesses are no longer under the control of the government, some have been transferred to different federal facilities, and others are on supervised release. Plaintiff needs to interview these witnesses to confirm that they have information probative to the issues in this case.

e. Counsel are trying to coordinate a date for Plaintiff's counsel to view and photograph the recreation yard and interview the prisoner witnesses who are still incarcerated at the Three River facility.

f. There are several discovery issues the court needs to rule on. Though the court denied plaintiff's motion to compel, it did not address the request to review in-camera documents the government alleges are privileged, nor did the court address plaintiff's request for photographs and videotapes of the recreation yard and the weight lifting area.

III.

For the foregoing reasons, plaintiff requests that the trial of this cause be reset for ninety (90) days.

IV.

WHEREFORE, Plaintiff prays for the relief sought in this motion be granted.

Respectfully submitted,

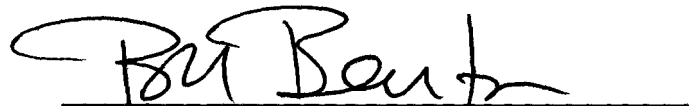


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**ATTORNEY-IN-CHARGE FOR
LUIS ALEJANDRO GARZA, PLAINTIFF**

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff has conferred with counsel for Defendant and she has indicated that she is unopposed to this motion.



BARRY R. BENTON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Plaintiff's Unopposed Motion for Continuance has been forwarded to defense counsel of record in this cause, to wit:

Via Hand Delivery

Ms. Nancy L. Masso
Assistant United States Attorney
600 E. Harrison Street, #201
Brownsville, Texas 78520

on this 22nd day of June, 2006.



BARRY R. BENTON